

STEVEN J. TUCKER  
Spokane County Prosecuting Attorney  
ROBERT B. BINGER  
Deputy Prosecuting Attorney  
Spokane County Prosecuting Attorney's Office  
W. 1115 Broadway, 2<sup>nd</sup> Floor  
Spokane, Washington 99260  
(509) 477-5764

Attorneys for Defendants

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MICHAEL SCOTT MACLAY, a single )  
person, )

No.

Plaintiff, )

v. )

**NOTICE OF REMOVAL TO  
FEDERAL COURT**

SPOKANE COUNTY; SPOKANE )  
COUNTY SHERIFF'S DEPARTMENT, )  
SHERIFF OZZIE KNEZOVICH, )  
BRENDA NELSON, DEPUTY J. COOK, )  
SPOKANE COUNTY JAIL, JOHN )  
DOE(S) )

**(CLERK'S ACTION REQUIRED)**

Defendants. )

TO: THE CLERK OF THE ABOVE-ENTITLED COURT;  
TO: MICHAEL SCOTT MACLAY, Plaintiff; and  
TO: DOUGLAS D. PHELPS

PLEASE TAKE NOTICE that Defendants hereby request that the  
United States District Court for the Eastern District of Washington assume

1 jurisdiction over the suit filed by the Plaintiff Michael Scott Maclay under  
2 Spokane County Superior Court Cause No. 14-2-00883-4. The Complaint  
3 for Violation of Civil Rights was filed on March 14, 2014. Plaintiff Michael  
4 Scott Maclay complaint alleges federal causes of action. Specifically,  
5 Michael Scott Maclay brings the action pursuant to 42 U.S.C. § 1983 and  
6 alleges violation of the 8<sup>th</sup> Amendment of the Constitution of the United  
7 States. All defendants agree to removal of this action to federal court. Thus,  
8 this suit is subject to removal pursuant to 28 U.S.C. § 1441. A true and  
9 correct copy of the Summons and Complaint are attached, along with copies  
10 of the remainder of pleadings on file with the Spokane County Superior  
11 Court (Attachment "A").  
12

13  
14 DATED this 8<sup>th</sup> day of April, 2014.

15 STEVEN J. TUCKER  
16 Spokane County Prosecuting Attorney

17 s/ Robert B. Binger  
18 ROBERT B. BINGER, WSBA# 10774  
19 Attorney for Defendant Spokane County  
20 Spokane County Prosecuting Atty's Office  
21 W. 1115 Broadway Avenue  
22 Spokane, WA 99260  
23 Telephone: (509) 477-5764  
24 Fax: (509) 477-3672  
Email: [rbinger@spokanecounty.org](mailto:rbinger@spokanecounty.org)

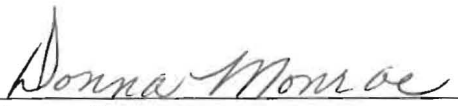
**PROOF OF SERVICE**

On the 8<sup>th</sup> day of April, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Douglas D. Phelps, Esq.	<input type="checkbox"/>	Personal Service
Phelps & Associates, P.S.	<input type="checkbox"/>	U.S. Mail
2903 N. Stout Road	<input checked="" type="checkbox"/>	Hand-Delivered
Spokane, Washington 99206-4373	<input type="checkbox"/>	Overnight Mail
(Attorneys for Plaintiff)	<input type="checkbox"/>	Facsimile

I hereby declare under the penalty of perjury and the laws of the State of Washington that the following statements are true.

Dated this 8<sup>th</sup> day of April, 2014, in Spokane, Washington.

  
Donna Monroe

# ATTACHMENT “A”

**FILED**

MAR 14 2014

SPOKANE COUNTY CLERK

ORIGINAL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE

MICHAEL SCOTT MACLAY, a single person,

Plaintiff,

v.

SPOKANE COUNTY; SPOKANE COUNTY  
SHERIFF'S DEPARTMENT, SHERIFF OZZIE  
KNEZOVICH, BRENDA NELSON, DEPUTY J.  
COOK, SPOKANE COUNTY JAIL, JOHN  
DOE(S);

Defendants.

NO. **14200883-4**

SUMMONS [20 DAYS]

TO: SPOKANE COUNTY; SPOKANE COUNTY SHERIFF'S  
DEPARTMENT, SHERIFF OZZIE KNEZOVICH, BRENDA NELSON,  
DEPUTY J. COOK, SPOKANE COUNTY JAIL, JOHN DOE(S)

AND TO: Their attorneys.

A lawsuit has been started against you in the above-entitled Court by MICHAEL SCOTT MACLAY, Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the person signing this Summons within twenty (20) days after the service of this Summons, excluding the day of service, or within sixty (60) days if this Summons was served outside the State of Washington, or within forty (40) days if this Summons is served through the Insurance Commissioner's

SUMMONS - 1

PHELPS & ASSOCIATES, PS  
Attorneys at Law  
2903 N. Stout Rd.  
Spokane, WA 99206-4373  
Email: phelps@phelpslaw1.com


1 Office, or a Default Judgment may be entered against you without notice. A Default  
2 Judgment is one where Plaintiff is entitled to what the Complaint asks for because you  
3 have not responded. If you serve a Notice of Appearance on the undersigned attorney,  
4 you are entitled to notice before a Default Judgment may be entered.

5 You may demand that the Plaintiff file this lawsuit with the Court. If you do so,  
6 the demand must be made in writing and must be served upon the Plaintiff. Within  
7 fourteen (14) days after you serve demand, the Plaintiff must file this lawsuit with the  
8 Court, or the service on you of this Summons and Complaint will be void.

9 If you wish to seek the advice of an attorney in this matter, you should do so  
10 promptly so that your written response, if any, may be served on time.

11 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of  
12 the State of Washington.

13 Dated at Spokane, Washington this 3<sup>rd</sup> day of March, 2014

14  
15   
16 Douglas D. Phelps, WSBA # 22620  
17 Attorney for Plaintiff  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUMMONS - 2

PHELPS & ASSOCIATES, PS  
Attorneys at Law  
2903 N. Stout Rd.  
Spokane, WA 99206-4373  
Email: phelps@phelpslaw1.com

**FILED**

MAR 14 2014

SPOKANE COUNTY CLERK

**ORIGINAL**

**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE**

MICHAEL SCOTT MACLAY, a single person,

Plaintiff,

v.

SPOKANE COUNTY; SPOKANE COUNTY  
SHERIFF'S DEPARTMENT, SHERIFF  
OZZIE KNEZOVICH, BRENDA NELSON,  
DEPUTY J. COOK, SPOKANE COUNTY  
JAIL, JOHN DOE(S);

Defendants.

NO. **14200883-4**

COMPLAINT

COMES NOW the Plaintiff, MICHAEL SCOTT MACLAY, by and through  
his attorney, DOUGLAS D. PHELPS, and for a cause of action against the Defendants  
above-named alleges as follows:

**I. INTRODUCTION**

1.1 This is a civil action seeking damages against the Defendants for committing  
acts under the color of law, depriving the Plaintiff of rights secured by the  
United States Constitution and the laws of the United States. Defendants,  
Brenda Nelson, Deputy J. Cook, and John Doe(s), while acting in their  
capacities as employees of Spokane County, Washington, acted to deprive the  
Plaintiff of his constitutional rights.

1.2 Additionally, the acts of Spokane County, Spokane County Sheriff's

COMPLAINT - 1

PHELPS & ASSOCIATES, PS  
Attorneys at Law  
2903 N. Stout Rd.  
Spokane, WA 99206-4373  
Email: phelps@phelpslaw1.com

1 Department, Sheriff Ozzie Knezovich, Brenda Nelson, Deputy J. Cook,  
 2 Spokane County Jail, and John Doe(s) violated the Plaintiff's rights pursuant to  
 3 the United States Constitution, 42 USC 1983 and 1985, Washington State  
 4 Constitution, the Americans with Disabilities Act, the Revised Code of  
 5 Washington, and the common law.

6 The Plaintiff was arrested for a civil bench warrant and held for multiple days in  
 7 the Spokane County Jail, despite having been turned away from jail once before  
 8 for health reasons upon presenting himself there as requested. He was held for  
 9 three days and deprived of necessary medications. He suffered respiratory  
 10 arrest and severe discomfort as a result.

## 11 II. JURISDICTION AND VENUE

12 2.1 This action is brought pursuant to 42 USC Section 1983 and 1985, alleging  
 13 that the Defendants acted under the color of law, depriving the Plaintiff of his  
 14 rights, privileges, and immunities as guaranteed by the Fourth, Fifth, Eighth,  
 15 and Fourteenth Amendments to the United States Constitution.

16 2.2 This action is brought pursuant to the laws of the State of Washington and the  
 17 United States of America.

18 2.3 All acts complained of occurred in Spokane County, State of Washington.

19 2.4 The Defendants, Spokane County, the Spokane County Sheriff's Department,  
 20 and the Spokane County Jail are government entities located in Spokane  
 21 County, State of Washington.

22 2.5 Defendant Sheriff Ozzie Knezovich is and was the elected Sheriff of the  
 23 Spokane County Sheriff's Department. Defendant Deputy J. Cook was a  
 24 deputy employed by the Spokane County Sheriff's Department, Defendant  
 25 Brenda Nelson was supervisor of the Spokane County Jail, and Defendants  
 26 John Doe(s) were jail personnel employed by the Spokane County Sheriff's  
 27 Department. All Defendants reside in Spokane County, State of Washington.

28 2.6 The venue is proper in Spokane County, State of Washington.

COMPLAINT - 2

PHELPS & ASSOCIATES, PS  
 Attorneys at Law  
 2903 N. Stout Rd.  
 Spokane, WA 99206-4373  
 Email: phelps@phelpsaml.com



### III. PARTIES

- 1
- 2 3.1 The Plaintiff, Michael Scott Maclay, is a resident of the State of
- 3 Washington, in the United States of America.
- 4 3.2 The Defendant, Spokane County, is a county government of Spokane
- 5 County, State of Washington, United States of America.
- 6 3.3 The Defendant, Spokane County Sheriff's Department, is an agency of the
- 7 Spokane County government in the State of Washington, United States of
- 8 America.
- 9 3.4 Defendant Sheriff Ozzie Knezovich is and was the elected Sheriff of the
- 10 Spokane County Sheriff's Department.
- 11 3.5 The Spokane County Sheriff's Department operates an adult detention
- 12 facility in Spokane County which housed Michael Scott Maclay.
- 13 3.6 Brenda Nelson is a jail supervisor employed by the Spokane County Jail
- 14 and the Spokane County Sheriff's Department.
- 15 3.7 Deputy J. Cook is a deputy employed by the Spokane County Sheriff's
- 16 Department who each arrested Michael Scott Maclay.
- 17 3.8 John Doe(s) were jail staff directly responsible for protection and
- 18 supervision of Michael Scott Maclay and his health and well-being.

### IV. CAUSE OF ACTION

19 FOR VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS

20 UNDER COLOR OF LAW PURSUANT TO 42 USC 1983

21 (THE CIVIL RIGHTS ACT)

- 22 4.1 From on or about February 21, 2011 to February 24, 2011, Michael Scott
- 23 Maclay was incarcerated in the Spokane County Jail, State of Washington.
- 24 4.2 On or about March 20, 2009, Michael Scott Maclay was arrested and
- 25 incarcerated in the Spokane County Jail, State of Washington.
- 26 4.3 Upon intake during his March 20, 2009 incarceration, Michael Scott
- 27 Maclay advised Spokane County Jail personnel, including Defendant
- 28 Brenda Nelson, of his medical conditions and necessary medications.

COMPLAINT - 3

PHELPS & ASSOCIATES, PS  
Attorneys at Law  
2903 N. Stout Rd.  
Spokane, WA 99206-4373  
Email: phelps@phelpsllaw1.com

- 1 4.4 On or about October 22, 2010, Michael Scott Maclay reported to jail as  
2 requested on a civil bench warrant.
- 3 4.5 Upon reporting on October 22, 2010, Michael Scott Maclay was turned  
4 away from jail due to his health conditions.
- 5 4.6 At the time of arrest on February 21, 2011, Michael Scott Maclay advised  
6 the arresting officer, Deputy J. Cook, of having been turned away from jail  
7 on October 22, 2010. Deputy J. Cook arrested him nevertheless.
- 8 4.7 Upon intake on his incarceration beginning February 21, 2011, Michael  
9 Scott Maclay advised Spokane County Jail personnel, including Defendant  
10 Brenda Nelson, of his medical conditions and necessary medications.
- 11 4.8 Spokane County Jail personnel were further advised of Michael Scott  
12 Maclay's necessary medications by his daughter and son-in-law, who asked  
13 that he be given those medications.
- 14 4.9 Spokane County Jail personnel did not provide Michael Scott Maclay with  
15 his needed medications.
- 16 4.10 On February 21, 2011, while incarcerated, Michael Scott Maclay was  
17 observed lying on his bunk and stating that he could not breathe and could  
18 not sit up. He requested his inhaler at that time.
- 19 4.11 The next morning, Michael Scott Maclay was again agitated and  
20 complained of respiratory infection.
- 21 4.12 At 9:00 AM on February 22, Michael Scott Maclay requested his  
22 medications.
- 23 4.13 On February 22, he was placed on medical watch but was not given his  
24 medications.
- 25 4.14 In the night of February 22-23, Michael Scott Maclay blacked out and  
26 suffered severe respiratory problems.
- 27 4.15 At no time was Michael Scott Maclay provided with his necessary  
28 medications, despite his serious medical issues.
- 4.16 Spokane County Jail failed to care for the health of Michael Scott Maclay,  
in violation of his rights under 42 USC 1983.

COMPLAINT - 4

PHELPS & ASSOCIATES, PS  
Attorneys at Law  
2903 N. Stout Rd.  
Spokane, WA 99206-4373  
Email: phelps@phelpslaw1.com

1       4.17   That as a result of the violations to Michael Scott Maclay's rights, Michael  
2       Scott Maclay suffered and continues to suffer injury as a result of his  
3       incarceration and exacerbation of his respiratory issues.

4                                   V. CAUSE OF ACTION FOR VIOLATION OF  
5                                   PLAINTIFF'S CONSTITUTIONAL RIGHTS  
6       PURSUANT TO THE CONSTITUTION OF THE UNITED STATES AND THE  
7                                   WASHINGTON STATE CONSTITUTION

8       Michael Scott Maclay, Plaintiff, re-alleges paragraphs 4.1 to 4.15 as  
9       paragraphs 5.1 to 5.15.

10       5.16   That the failure to protect the health of Michael Scott Maclay was a  
11       violation of his rights pursuant to Article I Section 3, 7, 14, and 35 of the  
12       Washington State Constitution and the 8<sup>th</sup> Amendment to the Constitution  
13       of the United States.

14       5.17   That as a result of the violations to Michael Scott Maclay's Washington  
15       State and United States Constitutional Rights, Michael Scott Maclay  
16       suffered and continues to suffer injury as a result of his incarceration and  
17       exacerbation of his respiratory issues.

18                                   VI. CAUSE OF ACTION PURSUANT  
19                                   TO AGENCY THEORY

20       Michael Scott Maclay, Plaintiff, re-alleges paragraphs 4.1 to 4.15 as  
21       paragraphs 6.1 to 6.15.

22       6.16   That Spokane County is liable for actions of its agent, Spokane County  
23       Sheriff's Department, on its behalf.

24       6.17   That as a result of the actions or inactions of Spokane County, the Spokane  
25       County Sheriff's Department, Brenda Nelson, and jail staff, Michael Scott  
26       Maclay suffered and continues to suffer injury as a result of his  
27       incarceration and exacerbation of his respiratory issues.

28       COMPLAINT - 5

PHELPS & ASSOCIATES, PS  
Attorneys at Law  
2903 N. Stout Rd.  
Spokane, WA 99206-4373  
Email: phelps@phelpslaw1.com

VII. CAUSE OF ACTION PURSUANT  
TO DOCTRINE OF RESPONDEAT SUPERIOR

Michael Scott Maclay, Plaintiff, re-alleges paragraphs 4.1 to 4.15 as paragraphs 7.1 to 7.15.

- 7.16 That Defendant Ozzie Knezovich, Defendant Brenda Nelson, Spokane County Sheriff's Department, and Spokane County are liable for the actions of their employees under the doctrine of Respondeat Superior which resulted in the failure to care for the health of Michael Scott Maclay.
- 7.17 That as a result of the actions or inactions of the employees of the Spokane County Sheriff's Department, Spokane County, Brenda Nelson, and jail staff, Michael Scott Maclay suffered and continues to suffer injury as a result of his incarceration and exacerbation of his respiratory issues.

VIII. RELIEF SOUGHT

Michael Scott Maclay, Plaintiff, re-alleges paragraphs 4.1 to 4.15 as paragraphs 8.1 to 8.15.

- 10.16 WHEREFORE, the Plaintiff prays for judgment against the Defendants, jointly and severally, in an amount that will fairly compensate the Plaintiff for all damages sustained, costs, and reasonable attorneys' fees and costs, interest calculated at the maximum amount allowable by the law, and any other relief the Court deems just, including but not limited to:
- 10.17 Past and future medical expenses and counseling fees and cost.
- 10.18 Past and future loss of earnings.
- 10.19 Permanent and partial impairment of earnings and earning capacity.
- 10.20 Pain and suffering, both mental and physical.
- 10.21 Past and future permanent and partial disability.
- 10.22 Loss of enjoyment of life.
- 10.23 Past and future special damages.
- 10.24 Interest calculated at the maximum amount allowable by law, including prejudgment interest.

COMPLAINT - 6

PHELPS & ASSOCIATES, PS  
Attorneys at Law  
2903 N. Stout Rd.  
Spokane, WA 99206-4373  
Email: phelps@phelpslaw1.com

1 10.25 For punitive damages in an amount to be proven at trial.

2 10.26 Injunctive relief to protect Michael Scott Maclay and others similarly  
3 situated from negligent health care.

4 10.27 Injunctive relief to require the Spokane County Sheriff's Department to  
5 institute policies, procedures, and practices to protect inmates from  
6 negligent health care.

7 10.28 Attorneys' fees and cost.

8 10.29 Cost and disbursements herein in an amount to be proven at the time of  
9 trial.

10 Dated at Spokane, Washington, this 3 day of March, 2014

11 

12  
13 Douglas D. Phelps, WSBA # 22620  
14 Attorney for Plaintiff

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 COMPLAINT - 7

PHELPS & ASSOCIATES, PS  
Attorneys at Law  
2903 N. Stout Rd.  
Spokane, WA 99206-4373  
Email: phelps@phelpslaw1.com

1 STATE OF WASHINGTON )

) ss.

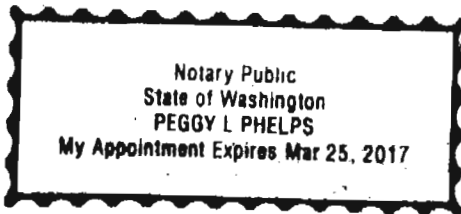
2 County of Spokane )

3 Michael Scott Maclay, being first duly sworn on oath, deposes and states:

4 I am the named Plaintiff herein, I have read the foregoing Amended Complaint  
5 for Damages, I know the contents thereof, and I believe the same to be true and correct.  
6

7  
8 Michael S. Maclay  
9 MICHAEL SCOTT MACLAY

10 SUBSCRIBED AND SWORN TO before me this 14<sup>th</sup> day of March, 2014  
11



Peggy L. Phelps  
NOTARY PUBLIC for the State of  
Washington  
Residing at Spokane  
My commission expires at 100%

COMPLAINT - 8

PHELPS & ASSOCIATES, PS  
Attorneys at Law  
2903 N. Stout Rd.  
Spokane, WA 99206-4373  
Email: phelps@phelpslaw1.com




**FILED**

MAR 14 2014

SPOKANE COUNTY CLERK

(Copy Receipt)

Clerk's Date Stamp

 <p align="center"><b>SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE</b></p>	<p><b>JUDGE MICHAEL P. PRICE 91</b></p>
<p>MACLAY, MICHAEL SCOTT</p> <p><b>Plaintiff(s)/Petitioner(s),</b></p> <p><b>vs.</b></p> <p>SPOKANE COUNTY, ET AL</p> <p><b>Defendant(s)/Respondent(s).</b></p>	<p><b>CASE NO. 2014-02-00883-4</b></p> <p><b>CASE ASSIGNMENT NOTICE AND ORDER (NTAS)</b></p> <p><b>CASE STATUS CONFERENCE DATE: JUNE 13, 2014 AT 9:00 AM</b></p>

**ORDER**

YOU ARE HEREBY NOTIFIED that this case is preassigned for all further proceedings to the judge noted above. **You are required to attend a Case Status Conference before your assigned judge on the date also noted above. The Joint Case Status Report must be completed and brought to the Status Conference. A Case Schedule Order, with the trial date, will be issued at the Status Conference.**

Under the individual calendar system, the court will operate on a four-day trial week. Trials will commence on Monday, Tuesday, Wednesday or Thursday. Motion Calendars are held on Friday. All motions, other than ex parte motions, must be scheduled with the assigned judge. Counsel must contact the assigned court to schedule motions and working copies of all motion pleadings must be provided to the assigned court at the time of filing with the Clerk of Court. Pursuant to LCR 40 (b) (10), motions must be confirmed no later than 12:00 noon two days before the hearing by notifying the judicial assistant for the assigned judge.

Please contact the assigned court to schedule matters regarding this case. You may contact the assigned court by phone, court department e-mail or through the Spokane County Superior Court web page at <http://www.spokanecounty.org/superiorcourt>

DATED: 03/14/2014



SALVATORE F. COZZA  
PRESIDING JUDGE

**NOTICE: The plaintiff shall serve a copy of the Case Assignment Notice on the defendant(s).**

CASE ASSIGNMENT NOTICE LAR 0.4.1(b) (4/2001) Rpt032

Page 1 of 1

ORIGINAL

FILED

MAR 18 2014

SPOKANE COUNTY CLERK

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANE  
CIVIL**

MACLAY, MICHAEL SCOTT

Plaintiff

NO: 2014-02-00883-4

v.


**MOTION AND DECLARATION FOR  
CHANGE OF JUDGE  
(MTAF)**

SPOKANE COUNTY, SPOKANE COUNTY SHERFF'S  
DEPARTMENT, SHERIFF OZZIE KNEZOVICH,  
BRENDA NELSON, DEPUTY J. COOK, SPOKANE  
COUNTY JAIL, JOHN DOE(S)

Defendants

**I. MOTION**

The undersigned, based on the following declaration, moves the court for an Order Granting Motion for Change of Judge.

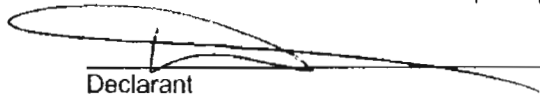
  
Signature
**II. DECLARATION**

2.1 I am: the Plaintiff's attorney in the above-captioned action. I make this declaration of personal knowledge and could and would competently testify to its contents.

2.2 I believe that a fair and impartial trial cannot be had before: Michael P. Price  
(Judge)

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Spokane, Washington (Place), Washington on 3/17/2014 (Date)

  
Declarant

Douglas D. Phelps, Attorney for the Plaintiff

MOTION/DECLARATION FOR CHANGE OF JUDGE (MTAF) - Page 1 of 1

WPF JU 11.0400 (9/2000) - RCW 4.12.040, .050

PHELPS & ASSOCIATES, PS  
Attorneys at Law  
2903 N. Stout Rd.  
Spokane, WA 99206-4373  
Email: phelps@phelpsaw1.com



**ORIGINAL****FILED****MAR 18 2014****SPOKANE COUNTY CLERK**

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANE  
CIVIL**

MACLAY, MICHAEL SCOTT

Plaintiff,

NO: 2014-02-00883-4

v.

**ORDER FOR CHANGE OF JUDGE**☐ **GRANTING MOTION (ORCJ)**☐ **DENYING MOTION (ORDYMT)**

SPOKANE COUNTY, SPOKANE COUNTY SHERFF'S  
DEPARTMENT, SHERIFF OZZIE KNEZOVICH,  
BRENDA NELSON, DEPUTY J. COOK, SPOKANE  
COUNTY JAIL, JOHN DOE(S)

Defendants.

The motion for change of judge brought by moving party \_\_\_\_\_ is:

☐ **Granted.**☐ **Denied for the reason that prior discretion has been exercised.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE/COMMISSIONER

Presented by: \_\_\_\_\_

\_\_\_\_\_  
Signature

Douglas D. Phelps, Attorney for Plaintiff  
WSBA #22620

**ORDER GRANTING/DENYING MOTION FOR CHANGE OF JUDGE (ORCJ)(ORDYMT) - Page 1 of 1**  
WPF JU 11.0410 (9/2000) - RCW 4.12.040, .050

PHELPS & ASSOCIATES, PS  
Attorneys at Law  
2903 N. Stout Rd.  
Spokane, WA 99206-4373  
Email: phelps@phelpslaw1.com

**PAGE 17**

FILED

MAR 24 2014

SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR SPOKANE COUNTY

MICHAEL SCOTT MACLAY, a single  
person,

Plaintiff(s),

vs

SPOKANE COUNTY; SPOKANE COUNTY  
SHERIFF'S DEPARTMENT; SHERIFF  
OZZIE KNEZOVICH, BRENDA NELSON,  
DEPUTY J. COOK, SPOKANE COUNTY  
JAIL, JOHN DOE(S),

Defendant(s).

NO. 14200883-4

AFFIDAVIT OF SERVICE

I DECLARE:

1. I am over the age of 18 years, and I am not a party to this action.
2. I served Deputy J. Cook with the following documents:

- ☐ a summons, a copy of which is attached, and a petition in this action.
- ☐ a parenting plan.
- ☐ an order to show cause.
- ☒ other:

Summons, Complaint and Case Assignment Notice and Order

3. The date, time and place of service were (if by mail refer to Paragraph 4 below):

Date: March 20, 2014

Time: 3:20 PM

Address: 1116 W Broadway – Recorder's Office  
Spokane, WA 99260

4. Service was made pursuant to Civil Rule 4(d):
- ☐ by delivery to the person named in paragraph 2 above.
  - ☒ by delivery Kathy Cook – authorized to accept service a person of suitable age and discretion working at the Spokane County Recorder's Office.
  - ☐ by publication as provided in RCW 4.28.100. (A copy of the summons is attached.)
  - ☐ (check only if there is a court order authorizing service by mail) by mailing two copies postage prepaid to the person named in the order entered by the court on \_\_\_\_\_ [Date]. One copy was mailed by ordinary first class mail, the other copy was sent by certified mail return receipt requested. (Attach return receipt below.) The copies were mailed on \_\_\_\_\_ [Date].

5. Other:

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Notary Public on March 21, 2014  
State of Washington (Date)  
Susan C. Dault  
Commission Expires 4/14/18 Shannon Nelson  
 Signature

Subscribed and sworn to me this 26<sup>th</sup> day of March, 2014. Shannon Nelson, Spokane County No. 1409  
 Print or Type Name

x Susan C. Dault  
 Notary Public in and for the State of Washington, Residing in Spokane. April 14, 2018  
 My Commission Expires

**FILED**

MAR 24 2014

SPOKANE COUNTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR SPOKANE COUNTY**MICHAEL SCOTT MACLAY, a single  
person,

Plaintiff(s),

vs

SPOKANE COUNTY; SPOKANE COUNTY  
SHERIFF'S DEPARTMENT; SHERIFF  
OZZIE KNEZOVICH, BRENDA NELSON,  
DEPUTY J. COOK, SPOKANE COUNTY  
JAIL, JOHN DOE(S),

Defendant(s).

NO. 14200883-4

AFFIDAVIT OF SERVICE

**I DECLARE:**

1. I am over the age of 18 years, and I am not a party to this action.
2. I served Brenda Nelson with the following documents:

- ☐ a summons, a copy of which is attached, and a petition in this action.
- ☐ a parenting plan.
- ☐ an order to show cause.
- ☒ other:

Summons, Complaint and Case Assignment Notice and Order

3. The date, time and place of service were (if by mail refer to Paragraph 4 below):

Date: March 20, 2014

Time: 3:20 PM

Address: 1116 W Broadway – Recorder's Office  
Spokane, WA 99260

4. Service was made pursuant to Civil Rule 4(d):
- ☐ by delivery to the person named in paragraph 2 above.
  - ☒ by delivery Kathy Cook – authorized to accept service a person of suitable age and discretion working at the Spokane County Recorder's Office.
  - ☐ by publication as provided in RCW 4.28.100. (A copy of the summons is attached.)
  - ☐ (check only if there is a court order authorizing service by mail) by mailing two copies postage prepaid to the person named in the order entered by the court on \_\_\_\_\_ [Date]. One copy was mailed by ordinary first class mail, the other copy was sent by certified mail return receipt requested. (Attach return receipt below.) The copies were mailed on \_\_\_\_\_ [Date].

5. Other:

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Spokane, WA on March 21, 2014

**Notary Public**  
**State of Washington**  
**Susan C. Dault**

**Commission Expires 4/14/18**

Subscribed and sworn to me this 21st  
 day of March, 2014.

Shannon Nelson  
 [Date]

Signature

Shannon Nelson, Spokane County No. 1409  
 Print or Type Name

Susan C. Dault  
 x  
 Notary Public in and for the State of  
 Washington, Residing in Spokane.

April 14, 2018  
 My Commission Expires

FILED

MAR 24 2014

SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR SPOKANE COUNTY

MICHAEL SCOTT MACLAY, a single  
person,

Plaintiff(s),

vs

SPOKANE COUNTY; SPOKANE COUNTY  
SHERIFF'S DEPARTMENT; SHERIFF  
OZZIE KNEZOVICH, BRENDA NELSON,  
DEPUTY J. COOK, SPOKANE COUNTY  
JAIL, JOHN DOE(S),

Defendant(s).

NO. 14200883-4

AFFIDAVIT OF SERVICE

I DECLARE:

1. I am over the age of 18 years, and I am not a party to this action.
2. I served Sheriff Ozzie Knezovich with the following documents:

- ☐ a summons, a copy of which is attached, and a petition in this action.
- ☐ a parenting plan.
- ☐ an order to show cause.
- ☒ other:

Summons, Complaint and Case Assignment Notice and Order

3. The date, time and place of service were (if by mail refer to Paragraph 4 below):

Date: March 20, 2014

Time: 3:20 PM

Address: 1116 W Broadway – Recorder's Office  
Spokane, WA 99260

☐ by delivery to the person named in paragraph 2 above.

☒ by delivery Kathy Cook – authorized to accept service a person of suitable age and discretion working at the Spokane County Recorder's Office.

☐ by publication as provided in RCW 4.28.100. (A copy of the summons is attached.)

☐ (check only if there is a court order authorizing service by mail) by mailing two copies postage prepaid to the person named in the order entered by the court on \_\_\_\_\_ [Date]. One copy was mailed by ordinary first class mail, the other copy was sent by certified mail return receipt requested. (Attach return receipt below.) The copies were mailed on \_\_\_\_\_ [Date].

Signed at Spokane, WA on March 21, 2014  
 [Place] [Date]  
**Notary Public**  
**State of Washington**  
**Susan C. Dault**  
**Commission Expires 4/14/18**  
 Subscribed and sworn to me this 26th day of March, 2014.  
 Signature Shannon Nelson  
Shannon Nelson, Spokane County No. 1409  
 Print or Type Name

Notary Public in and for the State of Washington, Residing in Spokane.

April 14, 2018  
My Commission Expires

**FILED**

MAR 24 2014

SPOKANE COUNTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR SPOKANE COUNTY**MICHAEL SCOTT MACLAY, a single  
person,

Plaintiff(s),

vs

SPOKANE COUNTY; SPOKANE COUNTY  
SHERIFF'S DEPARTMENT; SHERIFF  
OZZIE KNEZOVICH, BRENDA NELSON,  
DEPUTY J. COOK, SPOKANE COUNTY  
JAIL, JOHN DOE(S),

Defendant(s).

NO. 14200883-4

AFFIDAVIT OF SERVICE

**I DECLARE:**

1. I am over the age of 18 years, and I am not a party to this action.
2. I served Spokane County Sheriff's Department with the following documents:

- ☐ a summons, a copy of which is attached, and a petition in this action.
- ☐ a parenting plan.
- ☐ an order to show cause.
- ☒ other:

Summons, Complaint and Case Assignment Notice and Order

3. The date, time and place of service were (if by mail refer to Paragraph 4 below):

Date: March 20, 2014

Time: 3:20 PM

Address: 1116 W Broadway - Recorder's Office  
Spokane, WA 99260



4. Service was made pursuant to Civil Rule 4(d):
- ☐ by delivery to the person named in paragraph 2 above.
  - ☒ by delivery Kathy Cook – authorized to accept service a person of suitable age and discretion working at the Spokane County Recorder's Office.
  - ☐ by publication as provided in RCW 4.28.100. (A copy of the summons is attached.)
  - ☐ (check only if there is a court order authorizing service by mail) by mailing two copies postage prepaid to the person named in the order entered by the court on \_\_\_\_\_ [Date]. One copy was mailed by ordinary first class mail, the other copy was sent by certified mail return receipt requested. (Attach return receipt below.) The copies were mailed on \_\_\_\_\_ [Date].

5. Other:

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Spokane, WA on March 21, 2014

**Notary Public**  
**State of Washington**  
**Susan C. Dault**  
**Commission Expires 4/14/18**

Shannon Nelson  
 Signature  
Shannon Nelson, Spokane County No. 1409  
 Print or Type Name

Subscribed and sworn to me this 21st  
 day of March, 2014.

Susan C. Dault  
 x Notary Public in and for the State of  
 Washington, Residing in Spokane.

April 14, 2018  
 My Commission Expires

FILED

MAR 24 2014

SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR SPOKANE COUNTY

MICHAEL SCOTT MACLAY, a single  
person,

Plaintiff(s),

vs

SPOKANE COUNTY; SPOKANE COUNTY  
SHERIFF'S DEPARTMENT; SHERIFF  
OZZIE KNEZOVICH, BRENDA NELSON,  
DEPUTY J. COOK, SPOKANE COUNTY  
JAIL, JOHN DOE(S),

Defendant(s).

NO. 14200883-4

AFFIDAVIT OF SERVICE

I DECLARE:

1. I am over the age of 18 years, and I am not a party to this action.
2. I served Spokane County Jail with the following documents:

- ☐ a summons, a copy of which is attached, and a petition in this action.
- ☐ a parenting plan.
- ☐ an order to show cause.
- ☒ other:

Summons, Complaint and Case Assignment Notice and Order

3. The date, time and place of service were (if by mail refer to Paragraph 4 below):

Date: March 20, 2014

Time: 3:20 PM

Address: 1116 W Broadway – Recorder's Office  
Spokane, WA 99260

4. Service was made pursuant to Civil Rule 4(d):
- ☐ by delivery to the person named in paragraph 2 above.
- ☒ by delivery Kathy Cook – authorized to accept service a person of suitable age and discretion working at the Spokane County Recorder's Office.
- ☐ by publication as provided in RCW 4.28.100. (A copy of the summons is attached.)
- ☐ (check only if there is a court order authorizing service by mail) by mailing two copies postage prepaid to the person named in the order entered by the court on \_\_\_\_\_ [Date]. One copy was mailed by ordinary first class mail, the other copy was sent by certified mail return receipt requested. (Attach return receipt below.) The copies were mailed on \_\_\_\_\_ [Date].

5. Other:

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Spokane, WA on March 21, 2014  
 [Place] [Date]  
**Notary Public**  
**State of Washington**  
**Susan C. Dault**  
**Commission Expires 4/14/18**  
 Signature Shannon Nelson

Subscribed and sworn to me this 21st  
 day of March, 2014.  
 Print or Type Name Shannon Nelson, Spokane County No. 1409

Susan C. Dault  
 x Notary Public in and for the State of  
 Washington, Residing in Spokane.  
 April 14, 2018  
 My Commission Expires

**FILED**

MAR 24 2014

SPOKANE COUNTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR SPOKANE COUNTY**MICHAEL SCOTT MACLAY, a single  
person,

Plaintiff(s),

vs

SPOKANE COUNTY; SPOKANE COUNTY  
SHERIFF'S DEPARTMENT; SHERIFF  
OZZIE KNEZOVICH, BRENDA NELSON,  
DEPUTY J. COOK, SPOKANE COUNTY  
JAIL, JOHN DOE(S),

Defendant(s).

NO. 14200883-4

AFFIDAVIT OF SERVICE

**I DECLARE:**

1. I am over the age of 18 years, and I am not a party to this action.

2. I served Spokane County with the following documents:☐ a summons, a copy of which is attached, and a petition in this action.☐ a parenting plan.☐ an order to show cause.☒ other:

Summons, Complaint and Case Assignment Notice and Order (6 copies of each)

3. The date, time and place of service were (if by mail refer to Paragraph 4 below):

Date: March 20, 2014

Time: 3:20 PM

Address: 1116 W Broadway -- Recorder's Office  
Spokane, WA 99260

4. Service was made pursuant to Civil Rule 4(d):
- ☐ by delivery to the person named in paragraph 2 above.
  - ☒ by delivery Kathy Cook – authorized to accept service a person of suitable age and discretion working at the Spokane County Recorder's Office.
  - ☐ by publication as provided in RCW 4.28.100. (A copy of the summons is attached.)
  - ☐ (check only if there is a court order authorizing service by mail) by mailing two copies postage prepaid to the person named in the order entered by the court on \_\_\_\_\_ [Date]. One copy was mailed by ordinary first class mail, the other copy was sent by certified mail return receipt requested. (Attach return receipt below.) The copies were mailed on \_\_\_\_\_ [Date].

5. Other:

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Spokane, WA on March 21, 2014  
Notary Public [Date]  
State of Washington  
Susan C. Dault  
Commission Expires 4/14/18  
Shannon Nelson  
 Signature

Subscribed and sworn to me this 21st  
 day of March, 2014.  
Shannon Nelson, Spokane County No. 1409  
 Print or Type Name

x Susan C. Dault  
 Notary Public in and for the State of  
 Washington, Residing in Spokane.  
April 14, 2018  
 My Commission Expires

FILED

MAR 25 2014

SPOKANE COUNTY CLERK

(Clerk's Date Stamp)

(Copy Receipt)

SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANEMichael Scott MacLay

Plaintiff/Petitioner

vs.

Spokane County, et al.

Defendant/Respondent

CASE NO. 2014-02-00883-4MOTION, CERTIFICATE AND ORDER  
FOR CHANGE OF JUDGE

Clerks Action Required (ORCJ)

## I. Motion

The undersigned, based on the following certificate, moves the court for an Order for Change of Judge.

## II. Certificate

2.1 I am: Douglas Phelps, attorney for Plaintiff in the above entitled action;  
(Name and Title)2.2 I believe that a fair and impartial trial in this case cannot be had before: Michael P. Price  
(Judge)

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

3/20/2014 Spokane Washington  
(Date and Place)

Signature (moving)

## III. Order

The motion is: ☒ Granted ☐ Denied because prior discretion has been exercised.  
☐ Denied because the motion is untimely under CR 40(f) / CrR 8.9 / RALJ 8.9 C.Dated: 3/25/2014  
Presented by: \_\_\_\_\_

WSBA # \_\_\_\_\_

Judge

MICHAEL P. PRICEMOTION/CERTIFICATE/ORDER FOR CHANGE OF JUDGE  
(Rev 06/2001)

PAGE 1 OF 1



# SUPERIOR COURT FOR SPOKANE COUNTY

RONALD E. MILES  
Court Administrator  
rmiles@spokanecounty.org

Leanne M. Wakefield  
Assistant Court Administrator  
lwakefield@spokanecounty.org

**FILED**

**MAR 26 2014**

March 25, 2014

Douglas Dwight Phelps  
Phelps & Associates PS  
2903 N Stout Rd  
Spokane WA 99206-4373

SPOKANE COUNTY CLERK

**Re: Spokane County Cause No. 2014-02-00883-4  
MACLAY, MICHAEL S VS SPOKANE COUNTY ETAL**

Dear Counsel:

The above case has been reassigned to Judge Harold D. Clarke III for all further proceedings. Please contact Judicial Assistant Linda Sutton at (509) 477-5717 regarding any scheduling matters.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kim Kilham".

Kim Kilham  
Civil Case Coordinator

Copy: Court File

1116 W. Broadway Avenue  
Spokane, WA 99260-0350

TEL: (509) 477-5790

FAX: (509) 477-5714

TDD: (509) 477-5790

Rpt037

**FILED**

MAR 26 2014

SPOKANE COUNTY CLERK

Clerk's Date Stamp

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANE**

MACLAY, MICHAEL S

Plaintiff(s)/Petitioner(s),

vs.

SPOKANE COUNTY ETAL

Defendant(s)/Respondent(s).

CASE NO. 2014-02-00883-4

ORDER OF PREASSIGNMENT  
(ORP)

ID NUMBER: 94

**ORDER**

IT IS HEREBY ORDERED that this case is preassigned for all further proceedings  
to: JUDGE HAROLD D. CLARKE III.

DATED: 3/25/2014

**COPIES MAILED TO:**

DOUGLAS DWIGHT PHELPS

SALVATORE F. COZZA  
PRESIDING JUDGE



FILED

MAR 28 2014

SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE

MICHAEL SCOTT MACLAY, a single  
person,

Plaintiff,

v.

SPOKANE COUNTY; SPOKANE  
COUNTY SHERIFF'S DEPARTMENT,  
SHERIFF OZZIE KNEZOVICH,  
BRENDA NELSON, DEPUTY J. COOK,  
SPOKANE COUNTY JAIL, JOHN  
DOE(S)

Defendants.

No. 14-2-00883-4

NOTICE OF APPEARANCE  
(NTAPR)

**TO:** Michael Scott Maclay, Plaintiff, and Douglas D. Phelps, your attorney;

You are hereby notified that Defendants, SPOKANE COUNTY; SPOKANE  
COUNTY SHERIFF'S DEPARTMENT, SHERIFF OZZIE KNEZOVICH,  
BRENDA NELSON, DEPUTY J. COOK, SPOKANE COUNTY JAIL, enter a  
Notice of Appearance by and through the undersigned attorney and request that copies

NOTICE OF APPEARANCE (NTAPR)  
Page 1 of 3

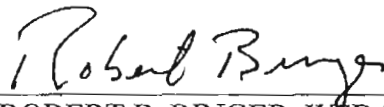
SPOKANE COUNTY  
Prosecuting Attorney  
W. 1115 Broadway Avenue  
Spokane, WA 99260  
(509) 477-5764

1 of all papers, pleadings and other instruments, other than service of process, be served  
2 upon Robert B. Binger at West 1115 Broadway Avenue, Second Floor, Spokane,  
3 Washington, 99260.

4 In entering this Notice of Appearance, Defendants, do not waive and expressly  
5 reserve all defenses, including but not limited to lack of personal service on all  
6 defendants except Spokane County.

7 DATED this 27<sup>th</sup> day of March, 2014.

8  
9 STEVEN J. TUCKER  
Spokane County Prosecuting Attorney

10  
11   
12 ROBERT B. BINGER, WSBA #10774  
13 Sr. Deputy Prosecuting Attorney  
14 Attorneys for Defendants  
15  
16  
17  
18  
19  
20  
21  
22


23 NOTICE OF APPEARANCE (NTAPR)  
24 Page 2 of 3

SPOKANE COUNTY  
Prosecuting Attorney  
W. 1115 Broadway Avenue  
Spokane, WA 99260  
(509) 477-5764

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4

On the 28<sup>th</sup> day of March, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

☒ Personal Service  
☐ U.S. Mail  
☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile

  
Tamara L. Baldwin

**SPOKANE COUNTY**  
Prosecuting Attorney  
W. 1115 Broadway Avenue  
Spokane, WA 99260  
(509) 477-5764

COPY  
ORIGINAL FILED

APR 07 2014

SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE

MICHAEL SCOTT MACLAY, a single )  
person, )

No. 14-2-00883-4

Plaintiff, )

v. )

**DEFENDANTS' ANSWER AND  
AFFIRMATIVE DEFENSES**

SPOKANE COUNTY; SPOKANE )  
COUNTY SHERIFF'S DEPARTMENT, )  
SHERIFF OZZIE KNEZOVICH, )  
BRENDA NELSON, DEPUTY J. COOK, )  
SPOKANE COUNTY JAIL, JOHN )  
DOE(S) )

Defendants. )

COME NOW Defendants Spokane County, Spokane County Sheriff's  
Department, Sheriff Ozzie Knezovich, Brenda Nelson, Deputy J. Cook,  
Spokane County Jail by and through Deputy Prosecuting Attorney Robert B.  
Binger and in response to the allegations contained in Plaintiff's Complaint,  
admit, deny, and allege as follows:

ANSWER & AFFIRMATIVE DEFENSES  
Page 1 of 11

SPOKANE COUNTY  
Prosecuting Attorney  
W. 1115 Broadway Avenue  
Spokane, WA 99260  
(509) 477-5764

I. INTRODUCTION

1.1 In answering the allegations contained in Paragraph 1.1 of Plaintiff's Complaint, Defendants deny the same.

1.2 In answering the allegations contained in Paragraph 1.2 of Plaintiff's Complaint, Defendants deny the same.

II. JURISDICTION AND VENUE

2.1 In answering the allegations contained in Paragraph 2.1 of Plaintiff's Complaint, Defendants admit the same.

2.2 In answering the allegations contained in Paragraph 2.2 of Plaintiff's Complaint, Defendants admit the same.

2.3 In answering the allegations contained in Paragraph 2.3 of Plaintiff's Complaint, Defendant admits the same.

2.4 In answering the allegations contained in Paragraph 2.4 of Plaintiff's Complaint, Defendants admit Spokane County is a governmental entity and deny the remainder.

2.5 In answering the allegations contained in Paragraph 2.5 of Plaintiff's Complaint, Defendants admit Ozzie Knezovich is the elected Sheriff and Deputy J. Cook is a deputy employed by the Spokane County Sheriff's Office. Defendants deny that Brenda Nelson is a supervisor of the Spokane

1 County Jail. Defendants are without knowledge or information sufficient to  
2 form a belief as to the truth that John Doe(s) were jail personnel employed by  
3 Spokane County Sheriff's Office and reside in Spokane County and on those  
4 grounds deny the same.

5  
6 2.6 In answering the allegations contained in Paragraph 2.6 of  
7 Plaintiff's Complaint, Defendants admit the same.

8 III. PARTIES

9 3.1 In answering the allegations contained in Paragraph 3.1 of  
10 Plaintiff's Complaint, Defendants are without knowledge or information  
11 sufficient to form a belief as to the truth thereof and on that ground denies the  
12 same.

13  
14 3.2 In answer to the allegations contained in Paragraph 3.2 of the  
15 Plaintiff's Complaint, Defendants explain that Spokane County is a political  
16 subdivision of the State of Washington.

17 3.3 In answer to the allegations contained in Paragraph 3.3 of the  
18 Plaintiff's Complaint, Defendants deny the same and explain that the  
19 Spokane County Sheriff's Office is an administrative creation by an  
20 independent elected official to allow him to carry out his statutory duties.  
21

1           3.4 In answering the allegations contained in Paragraph 3.4 of  
2 Plaintiff's Complaint, Defendants admit the same.

3           3.5 In answering the allegations contained in Paragraph 3.5 of  
4 Plaintiff's Complaint, Defendants deny the same.

5           3.6 In answering the allegations contained in Paragraph 3.6 of  
6 Plaintiff's Complaint, Defendants deny the same.

7           3.7 In answering the allegations contained in Paragraph 3.7 of  
8 Plaintiff's Complaint, Defendants admit the same.

9           3.8 In answering the allegations against unidentified parties contained  
10 in Paragraph 3.8 of Plaintiff's Complaint, Defendants are without knowledge or  
11 information sufficient to form a belief as to the truth thereof and on that ground  
12 deny the same.  
13  
14

15                               IV. CAUSE OF ACTION

16                   FOR VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS

17                               UNDER COLOR OF LAW PURSUANT TO 42 USC 1983

18                                       (THE CIVIL RIGHTS ACT)

19  
20           4.1 In answering the allegations contained in Paragraph 4.1 of  
21 Plaintiff's Complaint, Defendants admit the same.



1           4.2 In answering the allegations contained in Paragraph 4.2 of  
2 Plaintiff's Complaint, Defendants admit the same.

3           4.3 In answering the allegations contained in Paragraph 4.3 of  
4 Plaintiff's Complaint, Defendants admit on March 20, 2009 Plaintiff provided  
5 the following information on the Receiving/Screening Form: "Inhalier (sic) –  
6 Ibutarol (sic) Advair" and medical needs "lung disease". Defendants deny the  
7 remainder.  
8

9           4.4 In answering the allegations contained in Paragraph 4.4 of  
10 Plaintiff's Complaint, Defendants deny the same.

11           4.5 In answering the allegations contained in Paragraph 4.5 of  
12 Plaintiff's Complaint, Defendants deny the same and explain that Plaintiff was  
13 turned away because the jail had no due in commitment for him.  
14

15           4.6 In answering the allegations contained in Paragraph 4.6 of  
16 Plaintiff's Complaint, Defendants admit the same.

17           4.7 In answering the allegations contained in Paragraph 4.7 of  
18 Plaintiff's Complaint, Defendants admit on February 21, 2011 Plaintiff  
19 provided the following information on the Receiving/Screening Form:  
20

21 "symbutol (sic), c pup (sic), albuterol (sic), fluticasone (sic)" and medical  
22 needs "asbestos". Defendants deny the remainder.



1           4.8 In answering the allegations contained in Paragraph 4.8 of  
2 Plaintiff's Complaint, Defendants are without knowledge or information  
3 sufficient to form a belief as to the truth thereof and on that ground deny the  
4 same.

5           4.9 In answering the allegations contained in Paragraph 4.9 of  
6 Plaintiff's Complaint, Defendants deny the same.

7           4.10 In answering the allegations contained in Paragraph 4.10 of  
8 Plaintiff's Complaint, Defendants deny that Plaintiff could not sit up and admit  
9 the remainder.  
10

11           4.11 In answering the allegations contained in Paragraph 4.11 of  
12 Plaintiff's Complaint, Defendants admit the same.

13           4.12 In answering the allegations contained in Paragraph 4.12 of  
14 Plaintiff's Complaint, Defendants admit the same.

15           4.13 In answering the allegations contained in Paragraph 4.13 of  
16 Plaintiff's Complaint, Defendants admit the same. Defendants explain Plaintiff  
17 refused on February 22, 2011 to sign a specific consent to release medication  
18 information from his health care providers.  
19

20           4.14 In answering the allegations contained in Paragraph 4.14 of  
21 Plaintiff's Complaint, Defendants deny the same.  
22

1           4.15 In answering the allegations contained in Paragraph 4.15 of  
2 Plaintiff's Complaint, Defendants deny the same.

3           4.16 In answering the allegations contained in Paragraph 4.16 of  
4 Plaintiff's Complaint, Defendants deny the same.

5           4.17 In answering the allegations contained in Paragraph 4.17 of  
6 Plaintiff's Complaint, Defendants deny the same.

7  
8           V. CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S  
9 CONSTITUTIONAL RIGHTS PURSUANT TO THE CONSTITUTION OF  
10 THE UNITED STATE AND THE WASHINGTON STATE  
11 CONSTITUTION  
12

13           Defendants reallege each and every previous answer as if fully set forth  
14 herein.

15           5.16 In answering the allegations contained in Paragraph 5.16 of  
16 Plaintiff's Complaint, Defendants deny the same.

17           5.17 In answering the allegations contained in Paragraph 5.17 of  
18 Plaintiff's Complaint, Defendants deny the same.

19  
20           VI. CAUSE OF ACTION PURSUANT TO AGENCY THEORY

21           Defendants reallege each and every previous answer as if fully set forth  
22 herein.

1           6.16 In answering the allegations contained in Paragraph 6.16 of  
2 Plaintiff's Complaint, Defendants deny the same.

3           6.17 In answering the allegations contained in Paragraph 6.17 of  
4 Plaintiff's Complaint, Defendants deny the same.

5  
6                               **VII. CAUSE OF ACTION PURSUANT**  
7                               **TO DOCTRINE OF RESPONDEAT SUPERIOR**

8           Defendants reallege each and every previous answer as if fully set forth  
9 herein.

10           7.16 In answering the allegations contained in Paragraph 7.16 of  
11 Plaintiff's Complaint, Defendants deny the same.

12           7.17 In answering the allegations contained in Paragraph 7.17 of  
13 Plaintiff's Complaint, Defendants deny the same.

14  
15                               **AFFIRMATIVE DEFENSES**

16           Defendant having previously answered Plaintiff's Complaint now sets  
17 forth the following by way of Affirmative Defenses:

18           1.1 Lack of personal service;

19  
20           1.2 Plaintiff's claims must be dismissed on the basis of immunity  
21 and/or qualified immunity;

1           1.3 Pursuant to CR 12(b) (6), Plaintiff's action should be dismissed for  
2 failing to state a claim upon which relief can be granted;

3           1.4 Plaintiff's action must fail because no custom or policy caused the  
4 alleged constitutional deprivations.

5           1.5 Defendants acted within a reasonable standard of care as set forth by  
6 law;

7           1.6 Defendants did not breach any duty of care to Plaintiff;

8           1.7 Spokane County Sheriff's Department and Spokane County Jail  
9 are not suable entities;

10           1.8 If Plaintiff was damaged as alleged, all damages are the proximate  
11 result of Plaintiff's own acts or omissions.

12           1.9 Plaintiff would not provide specific consent to release medical  
13 information from health care providers.

14           1.10 Plaintiff's request for injunctive relief was rendered moot by his  
15 release from jail.

16           1.11 Defendant reserves the right to amend this Answer to include such  
17 other and further affirmative defenses that may be more fully developed as this  
18 case and discovery progresses.

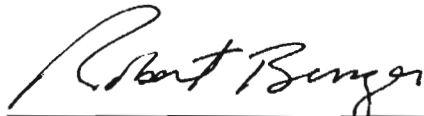
1       **WHEREFORE**, Defendant having previously provided their answer to  
2 Plaintiff's factual allegations and having set forth affirmative defenses, requests  
3 the following relief:

4           1.     That Plaintiff's action be dismissed with Plaintiff taking nothing  
5 thereby; and  
6

7           2.     For such other and further relief as the court deems just and  
8 equitable.

9           DATED this 7<sup>th</sup> day of April, 2014.

10  
11                   STEVEN J. TUCKER  
                    Spokane County Prosecuting Attorney

12                     
13                   ROBERT B. BINGER, WSBA #10774  
14                   Sr. Deputy Prosecuting Attorney  
15                   Attorneys for Defendants  
16  
17  
18  
19  
20  
21  
22

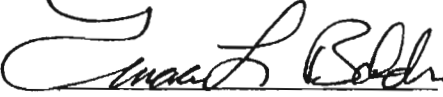
**PROOF OF SERVICE**

I hereby declare under the penalty of perjury and the laws of the State of Washington that the following statements are true.

On the 7<sup>th</sup> day of April, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Douglas D. Phelps, Esq.	<input type="checkbox"/>	Personal Service
Phelps & Associates, P.S.	<input checked="" type="checkbox"/>	U.S. Mail
2903 N. Stout Road	<input type="checkbox"/>	Hand-Delivered
Spokane, Washington 99206-4373	<input type="checkbox"/>	Overnight Mail
(Attorneys for Plaintiff)	<input type="checkbox"/>	Facsimile

Dated this 7<sup>th</sup> day of April, 2014, in Spokane, Washington.

  
Tamara L. Baldwin